IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

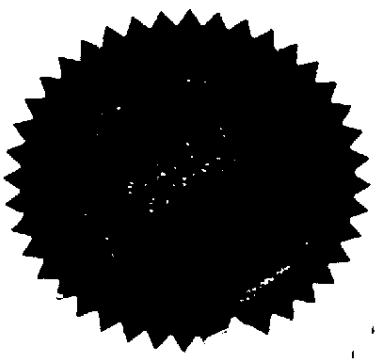
THE STATE OF FLORIDA, et al.,

Plaintiffs,

vs. CASE NO. CL 95-1466 AH

THE AMERICAN TOBACCO COMPANY,
et al.,

Defendants.
_____/



VIDEO DEPOSITION OF:	WILSON W. WRIGHT
TAKEN AT THE INSTANCE OF:	The Plaintiffs
DATE TAKEN:	July 22, 1997
LOCATION:	3375 Capital Circle N.E. Tallahassee, Florida
COMMENCING:	2:20 p.m.
CONCLUDING AT:	3:42 p.m.
REPORTED BY:	PEGGY L. OWENS, RMR Registered Professional Reporter

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A P P E A R A N C E S

DAVID FONVIELLE, Attorney at Law, of the law firm of Fonvielle, Hinkle & Lewis, 3375 Capital Circle, N.E., Building A, Tallahassee, Florida 32308; appeared on behalf of the Plaintiffs.

CHARLES J. MIKHAIL and LEE YOUNG, Attorneys at Law, of the law firm of Scruggs, Millette, Lawson, Bozeman & Dent, P.A., 734 Delmas Avenue, Post Office Drawer 1425, Pascagoula, Mississippi, 39568-1425; appeared on behalf of the Plaintiffs.

JERRY HUDSON EVANS, Attorney at Law, of the law firm of Ness, Motley, Loadholt, Richardson & Poole, 151 Meeting Street, Suite 600, Post Office Box 1137, Charleston, South Carolina 29402; appeared on behalf of the Plaintiffs.

JAMES A. GOOLD, Attorney at Law, of the law firm of Covington & Burling, 1201 Pennsylvania Avenue, N.W., Washington, D.C. 20044; appeared on behalf of the Deponent and the Defendants.

STEVEN P. LOCKMAN, Attorney at Law, of the law firm of Arnold & Porter, 555 Twelfth Street, N.W., Washington, D.C. 20004-1202; appeared on behalf of the Defendants.

D. DAVID KELLER, Attorney at Law, of the law firm of Bunnell, Woulfe, P.A., 888 East Las Olas Boulevard, Post Office Drawer 030340, Fort Lauderdale, Florida 33303; appeared on behalf of the Defendants.

ALSO PRESENT: KEVIN R. DEYO, Videographer

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EXHIBITS

No. 1 - Copy of Subpoena

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D E P O S I T I O N

Whereupon,

WILSON W. WRIGHT

was called as a witness; after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. YOUNG:

Q Mr. Wright, I introduced myself to you just a few minutes before. My name is Lee Young. I'm with the law firm of Scruggs Millette in Pascagoula. I represent the State of Florida in this case.

A What happened to Bob Butterworth?

Q He is there, too. I'm just one of the many. Mr. Wright, do you recall getting a subpoena to appear for the deposition today?

A Yes, I do.

Q I hand you what's been marked as Plaintiff's Exhibit 1 to the deposition. Do you recall receiving that subpoena?

A Well, if it wasn't this one it was one similar to it. I'm not sure about the exact times and dates that were on mine.

Q Can you look for me at the documents that were requested to be brought and see if that's similar to the subpoena that you --

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A It looks similar.

Q Can you look at the second page, too, just to make sure?

A I just remember there was a signature on the second page. I don't remember what it said.

Q If you will give the court reporter your full name, please.

A My name is Wilson Wright, W-R-I-G-H-T.

Q Okay. Mr. Wright, have you ever been in a deposition before?

A No, sir.

Q Okay. Have you had an opportunity to meet with the attorneys for the defendants?

A Yes, sir.

Q Have they explained to you about the deposition and what is generally expected and what is going to happen generally?

A Generally.

Q Okay. The reason I say that, there is a few guidelines, one of which is that I would appreciate if you would let me ask my question completely before you respond. And I will let you give your full response so that way we are not talking over each other because she can only take down one of us speaking at a time, okay. If I can have your cooperation on that, I'd appreciate

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it.

A That much I understand.

Q Okay. Did they also tell you that the subpoena that was issued required you to bring documents to the deposition?

A We discussed that.

Q Okay. Could you tell me, please -- first of all, are any of the attorneys here representing you personally?

A They've given me some advice. And I, are they representing me? I haven't retained them, no.

Q None of these lawyers here at the table have been retained to represent you in this, for this deposition; is that right?

A No, sir.

MR. GOOLD: Let me clarify. We have not been retained, but inasmuch as it is our understanding the deposition arises out Mr. Wright's having served as a lobbyist for The Tobacco Institute he is asked and we have agreed to represent him for purposes of the deposition.

BY MR. YOUNG:

Q All right. Did you compile any documents or did you have any documents that would be in compliance with the subpoena that you received?

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A Well, I didn't fully understand the subpoena that I got, since it said State of Florida versus a company that I thought was no longer in business. So I called Mr. Fonvielle to inquire as to the nature of the case, thinking from what I read in the papers it conceivably could be the flight attendants case now going on in Miami.

And he explained that it was the Medicaid fraud case. And I said, "Can you tell me the focus of your concern with my testimony, since I was not particularly involved in the Medicaid legislation?"

And I said, "You know, this is Tallahassee, Dave. If you wanted to talk to me, it is a small town, we all know each other, why didn't you just pick up the phone?"

"Well, I'm not the one who wanted you subpoenaed. You are on the witness list of the other side, and I only called you because they have you on their list."

And I said, "Well, let's talk about the duces tecum part."

I said, "What do you want?"

He said, "Well, I want everything you got."

And I said, "That could be a lot."

I said, "Let's not play games. Let's focus

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on what you want and I will cooperate with you and I will bring."

He said, "Well, Wilson, again let me remind you I'm not the one calling you. If you've talked to the other side or you are going to talk to the other side see what they want you to bring and bring those documents with you."

I talked to those whom I assume to be the, quote, other side. And they said they didn't have any particular documents they felt like I needed to bring.

Q Mr. Wright, are you a lawyer?

A Yes, sir.

Q How long have you been a lawyer?

A Since 1954.

Q Have you ever issued a subpoena before, sir?

A No, sir.

Q Have you ever seen a subpoena before?

A I'm sure I have.

Q Do you not understand that the subpoena served on you required you to bring documents to the deposition?

A That's why I tried to find out what was wanted.

Q You made no attempt to gather those documents and bring them to the deposition?

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A I don't want to be argumentative.

Q I'm not trying to either, sir.

A I thought I answered the question. Let me recap. I called Mr. Fonvielle, whose name is on the subpoena.

And I said, "What documents do you want me to bring?"

And the ultimate answer was, "Whatever documents the other side feels is significant."

The, quote, other side didn't feel like I needed to bring any documents. If Mr. Fonvielle had wanted me to bring documents I would have thought he would have said, look, we want to zero in on your role in the passage of the Medicaid bill, or we want to zero in on your representation of some client or your conversation with some legislator, but he didn't tell me that.

Q The subpoena reads, and I quote, "All documents related to your lobbying activities on behalf of or in any way relating to the tobacco industry, or relating to tobacco use in the State of Florida."

A I understand what it says, and I think --

Q Do you have any such documents?

A -- and I think I've answered your question the best I can.

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Q Do you have any such documents, sir?

A If somebody will tell me what documents they want I will produce them.

Q Sir, do you have any documents falling in that category?

A I don't know what category we are in.

Q Sir, I'm going to read it again, and I want your answer to this. "All documents related to your lobbying activities on behalf of or in any way relating to the tobacco industry or relating to tobacco use in the State of Florida."

Do you have a file or files related to the tobacco industry and your lobbying activities in the State of Florida?

A Mr. --

MR. GOOLD: Excuse me for a moment. Let me just interpose what I guess is an objection or a clarification for the record, that in addition we have filed a motion for protective order concerning the request for documents that you all have served on Mr. Wright.

We filed that because we believe that it was, the subpoena was far too broad and the grounds that are covered in the amended objections I've given you just a little while ago. That we filed

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that not knowing that in addition there had been communication between Mr. Wright and Mr. Fonvielle, just so you know that for the record.

But in addition to whatever contacts have taken place between Messrs. Wright and Fonvielle we have filed objections to the subpoena.

MR. YOUNG: Mr. Goold, do you have an order from the Court granting your motion for protective order?

MR. GOOLD: Are you taking my deposition?

MR. YOUNG: Mr. Goold, for the record do you have an order from the Court granting your motion for protective order that you filed?

MR. GOOLD: I guess I was going to ask if you had an order overruling my objections.

BY MR. YOUNG:

Q Mr. Wright --

MR. MIKHAIL: Florida procedure requires an order before --

MR. GOOLD: No, there has been no ruling from the Court to my knowledge on this ruling issue.

BY MR. YOUNG:

Q Mr. Wright, do you keep files regarding your activities concerning the tobacco industry and your

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lobbying activities --

A Yes.

Q -- in the State of Florida? Could you please describe those files for me, please?

A I've been lobbying since, what, 1969. I'm not sure exactly when the first tobacco client came through my door. But 1969 is not just yesterday.

For me to go back and dig through all of the records from when I first started lobbying would be a rather onerous task, which is why I called Mr. Fonvielle to see if we could focus in on what he wanted.

I told him I happily would be cooperative if he just would tell me where you want to go. If you will tell me where you want to go now, I will try to get what you want.

MR. MIKHAIL: Let me just interject something. Our understanding of the subpoena, not subpoena, of the motion that you filed -- we just saw it this morning -- that it covered documents that relate to these, quote, prohibited areas of inquiry, not to what the subpoena describes in toto. Are we wrong, Jim?

MR. GOOLD: It covers also certainly the amended one. It covers breadth and burden and

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absence of time limitation.

MR. MIKHAIL: An amended motion from what we've seen already?

MR. GOOLD: Yes, yes, what I brought this morning now.

MR. MIKHAIL: I didn't know there was an amended motion.

MR. GOOLD: Something we filed as soon as I learned the size of the files and the problems and some other things if we continue we may find out more about from the witness.

MR. MIKHAIL: Was this filed this morning?

MR. GOOLD: Yes.

MR. MIKHAIL: Because the one we found dealt with the prohibited areas. We were unaware of an amended motion dealing with that description, if I understand.

MR. GOOLD: The one you saw yesterday contains a reference to breadth. The one we filed this morning is more explicit in that general problem area.

It talks about the time limitation, talks about unlimited sort of scope and the problems that the subpoena sought to have production at a place other than the witness' --

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MR. MIKHAIL: I didn't mean to interrupt the question. I wanted to know which motion we were talking about. That's all.

BY MR. YOUNG:

Q Mr. Wright, are these documents kept in filing cabinets?

A No.

Q How are they kept or stored?

A In old cardboard boxes.

Q Are you currently a lobbyist for the tobacco industry?

A Well, how about defining the tobacco industry?

Q I see. Okay. Are you still doing any lobbying work for the FTCA as it relates to the tobacco industry, T.I., any of the tobacco manufacturers, sir?

A FTCA or the Florida Tobacco and Candy Association, yes.

Q Do you keep those -- and you currently do that, sir?

A Yes.

Q Do you keep those in cardboard boxes, too?

A Pretty much.

Q Okay. Where are those cardboard boxes located?

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A Some are in my office.
Q Where is your office located, sir?
A 217 S. Adams Street.
Q Give me a rough estimate on the number of boxes.
A Four or five I guess.
Q Any documents not located at 217 S. Adams Street?
A Located in closed files in a warehouse.
Q Where is that warehouse located, sir?
A On North Monroe Street.
Q What's the name of the warehouse?
A I'm not sure that I know. I could take you there.
Q Do you have an address for it?
A No, I could probably find it in the phone book.
Q Can you get that during a break? Will you get that for me, please?
A (Nodding head.)
Q What's the volume of documents, how many boxes of documents do you believe are at the warehouse?
A Probably 100, but I don't know that they all pertain to tobacco. In fact, I'm sure they don't all

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pertain to tobacco.

Q How many would you say pertain to tobacco?

A Maybe 10, 15.

Q Okay. So we --

A I don't know, I haven't been there to count them.

Q So approximately anywhere from 15 to 20 boxes related to tobacco?

A Probably.

Q Between your S. Adams Street location and your warehouse --

A Yes.

Q Let me finish my question. And your warehouse?

A Yes.

Q Okay. Did you go through any of those boxes in attempts to comply with this subpoena, sir?

A I wanted to, but I didn't know what you wanted. I didn't think you wanted minutes of the last board meeting of the Tobacco and Candy Association, but I didn't know. No one would tell me.

Let me reiterate one thing. I came here thinking Mr. Fonvielle was going to take the deposition. I came here with the attitude I wanted to cooperate. But we are beginning to take this down a

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rabbit trail that is making me feel very uncomfortable.

Q I apologize if I'm making you feel uncomfortable.

A I'm trying to cooperate --

MR. GOOLD: Hang on, hang on.

THE WITNESS: -- if you will tell me what it is you are trying to get at, after 20 years of lobbying where we want to focus, which I thought was Medicaid fraud because that's what Mr. Fonvielle said, then I think we can bring this back and I can tell you what I know about the enactment of the Medicaid law.

If you want to go somewhere else, if you will let me know that. If we have to recess, I will try to regroup. Just tell me what you want to know and let's not play games.

BY MR. YOUNG:

Q Well, you know as any lawyer you can respect the fact that I would like to look at the documents and make my own conclusions instead of having you select what documents necessarily that I'm going to look at or question you about.

Do you have a problem with the State of Florida looking through the 15 to 20 boxes of documents that you've just identified?

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A Yes.

Q Okay. What problem do you have with us looking?

A Well, first of all, I don't know that they will be put back in the order in which I turned them over.

Q I'm talking about in connection with you being present so we can make sure --

A Yes. It is going to be terribly time-consuming.

Q Anything else?

MR. GOOLD: You might want to talk to your lawyer.

MR. YOUNG: I thought you weren't his lawyer.

MR. GOOLD: I didn't say I was -- for the purpose --

THE WITNESS: Well, I suppose there are some items in there that would well fall within the purview of my client, attorney-client privileges.

MR. YOUNG: Mr. Goold, that's an interesting comment.

I believe you said that you are representing him for purposes of this deposition?

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MR. GOOLD: Yes, I did.

MR. YOUNG: Did you ask him -- have you seen the subpoena that was served on him?

MR. GOOLD: Don't take my deposition.

MR. YOUNG: I'm not. I'm asking you as an officer of the Court did you instruct him not to bring any documents to the deposition, Mr. Goold?

MR. GOOLD: If you want to take a deposition, go ahead and take a deposition. If you want to take my deposition, notice my deposition and we will talk about that.

MR. YOUNG: Mr. Goold, he said, he said that he asked you what documents he should bring to the deposition.

MR. GOOLD: Mr. Young --

THE WITNESS: No.

MR. GOOLD: We wouldn't have this problem if you had consulted with co-counsel before this deposition. Shall I interrogate you about that? No, I don't think that is appropriate, so don't try it on me.

MR. YOUNG: Mr. Goold, you are a lawyer. Mr. Wright is a lawyer. You've both seen subpoenas and you both know what a subpoena requires you to do.

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I'm a lot younger than both of you and even I know what a subpoena requires me to do and what can happen to me if I don't comply with the subpoena.

I'm asking you did you instruct him not to bring any documents to the deposition, Mr. Goold? He has obviously identified 15 to 20 boxes that are relevant to tobacco and covered by this subpoena potentially.

MR. GOOLD: Mr. Young, did you consult with your co-counsel before you embarked on this line of questioning and before you asked these questions of me?

MR. YOUNG: Mr. Goold, this subpoena doesn't say that the witness needs to confer with Mr. Fonvielle about what documents to bring, nor does it say he is to confer with The Tobacco Institute about what documents to bring.

MR. GOOLD: Mr. Young, what's your position regarding the authority of your co-counsel entering into agreements pertaining to --

MR. YOUNG: Apparently he entered into none.

MR. GOOLD: Mr. Young, this is inappropriate.

MR. YOUNG: You are exactly right on that.

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(Brief pause.)

MR. GOOLD: Do you want to go off the record and you can consult and maybe talk about where we go from here?

MR. MIKHAIL: Why don't we do that for just a couple seconds. We will step outside.

MR. GOOLD: Sure.

(Brief recess.)

BY MR. YOUNG:

Q Mr. Wright, previously before we left the record you identified 15 to 20 boxes that potentially have documents in there that would be related to this subpoena; is that right?

A Potentially is correct.

Q Okay. Sir, could we, if we continue with the deposition today when we don't have the documents, suspend the deposition and have an opportunity for you to get those documents and have them delivered over to this law firm this afternoon or tonight so we can go through the documents, and then if necessary continue.

I don't want to put you through another deposition if we don't have to, but have an opportunity to review the documents and then make copies of what we think is related to this subpoena, do you have a problem with that?

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A That's not practical.

Q Okay. You tell me what is practical then.

MR. GOOLD: I am going to speak now, I'm sorry. Our position is that the documentary portion of the subpoena was dealt with by discussions between Mr. Wright and Mr. Fonvielle. And I think the witness has covered what he has to say about that subject.

If you are going to ask questions about the kind of things you are now trying to do, I don't think that is appropriate. And if it becomes necessary I will instruct you not to answer.

MR. YOUNG: As luck would have it Mr. Fonvielle is here.

MR. GOOLD: Let me finish, Mr. Young. Let me finish. If you keep interrupting -- we had that problem yesterday. It just doesn't help.

Our position is the documentary portion of the subpoena has been dealt with. We are here to make Mr. Wright available for deposition.

If you want to go forward with that deposition, that is what we are here for and we would encourage you to do so. If, however, you don't agree with respect to the documents and it is your intention to move or whatever you want to

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do, I just want you to know that we will not reach an agreement of the kind that Mr. Young is proposing.

If we have to go back in front of Judge Rutter to argue about the documents and where we go from here, we will do so. We've all done that before. No doubt we will do so again.

But, no, we are not going to enter into an agreement that we produce him today for a deposition, then we fight about documents, and then there is an agreement that yet another deposition take place.

MR. FONVIELLE: Let me respond. We are under the Florida rules. Mr. Wright has been subpoenaed duces tecum. And as I understand it he has identified the documents.

There is no agreement anywhere that he not produce the documents. He cannot sit there, and I doubt he will sit there, and tell you that anyone other than maybe you have told him not to produce the documents.

So either you are here with the documents or you are not. If you are not here with them then we can move to compel the production of them, which we will do immediately because I think we

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can get Rutter on the phone, and we can temporarily adjourn the deposition while he runs over and gets them. That would be my suggestion.

Why don't we get Rutter on the phone?

MR. GOOLD: All right. Clearly we are at a point where it is appropriate to adjourn the deposition. And if it is your intention to litigate this question of the documents, then we will litigate it. We are not going to bounce back and forth.

If you want to try to reach Judge Rutter now, that's fine. Let's do that.

MR. MIKHAIL: I would like to ask, that's fine, but before we do that I would like to ask -- and I really believe we are entitled to an answer to this, we can't make you answer it, but we are on the record.

What is the legal basis or foundation that you have in instructing a witness who is not a party to this litigation, a third party whom we have subpoenaed documents from not to produce documents? On what grounds? Is there a certain legal basis for it?

MR. GOOLD: You are assuming facts not in evidence.

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MR. MIKHAIL: Well, you are not producing them. He testified you told him not to bring them.

MR. GOOLD: I informed, I told him, no, no.

MR. MIKHAIL: That what he said.

MR. GOOLD: No, We may have to have the record read back and no doubt we will for the benefit of Judge Rutter.

That wasn't what he said. Let me explain.

MR. FONVIELLE: Why don't we just ask him to explain it on the record?

MR. MIKHAIL: Mr. Fonvielle wasn't here. We are trying to resolve this.

MR. GOOLD: The deposition is now adjourned.

MR. YOUNG: No, it is not.

MR. MIKHAIL: It is our deposition.

MR. GOOLD: Either you will go forward -- you just said, we just heard from Mr. Fonvielle he wanted the deposition adjourned. It is adjourned.

MR. YOUNG: No, he didn't say adjourned.

MR. GOOLD: If you want to fight about documents, lets go fight about --

MR. MIKHAIL: I know you are anxious to get him out of here and getting yourself out of here,

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but the fact is we are trying to resolve this. If I'm mistaken in understanding his testimony, tell us again briefly.

Mr. Wright, what were you told by Counsel for The Tobacco Institute pertaining to these documents?

MR. GOOLD: Now, I will instruct him not to answer.

MR. MIKHAIL: On what grounds?

MR. GOOLD: We are in the midst of arguing a motion.

MR. FONVIELLE: I'm getting Rutter.

MR. GOOLD: If you want to reach him, fine. We will talk to him.

MR. FONVIELLE: Let's get Rutter on the phone.

MR. MIKHAIL: Are we still on the record?

MR. GOOLD: While we are still on the record I will be happy to tell you --

MR. MIKHAIL: I just want a legal basis for it.

MR. GOOLD: Please don't interrupt.

MR. MIKHAIL: All right, Jim. Go ahead. Go ahead. We don't need to go through this. Go ahead.

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THE WITNESS: I hope not.

MR. GOOLD: I came to Tallahassee to learn in that there had been a discussion between Mr. Wright and Mr. Fonvielle, which the witness has relayed.

I have not given him instructions not to produce anything. What he said was that Mr. Fonvielle had instructed him that he should bring to the deposition whatever I wanted to use at the deposition. Am I correct?

THE WITNESS: Correct.

MR. GOOLD: Is that not right?

THE WITNESS: That's right.

MR. GOOLD: I have nothing I plan to use. If I do I brought it, but that's my affair. I'm not giving him instructions not to comply with the subpoena. That was dealt with before I got here by contact between the witness and Mr. Fonvielle.

MR. MIKHAIL: So you as Tobacco Institute counsel at this deposition are not registering an objection to him producing the documents in compliance with the subpoena?

MR. GOOLD: We have a motion for protective order. We have objections on file, as well.

MR. YOUNG: But you don't have an order.

MR. MIKHAIL: You are in Florida. You have

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to have an order before he doesn't produce.

MR. GOOLD: Then we learned that there had been a discussion between the witness and Mr. Fonvielle. And you know as well as I, and we all know, that people make all kinds of arrangements within their authority.

MR. MIKHAIL: Jim, you are lecturing now. You are lecturing. You are filibustering him not producing documents in compliance with the subpoena. The only way we are going to solve this is the way Mr. Fonvielle suggested. We are going to have to get the judge.

MR. GOOLD: You all served a subpoena that was ridiculous.

MR. YOUNG: He obviously knows about 15 or 20 boxes.

MR. GOOLD: May I finish?

MR. YOUNG: No.

MR. GOOLD: Stop right now. I am completely tired of rude behavior and interruptions by Counsel.

MR. MIKHAIL: Oh, Jim, you talk too much and when somebody else wants to say something you consider it as interruption.

MR. LOCKMAN: Are we off the record?

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MR. MIKHAIL: No, we are on the record.

THE WITNESS: If we are still on the record, can we focus in on what you folks would like to know, what area of exploration? Imagine if I came and said to you bring me all of your records from 1969. You know. There is probably two or three boxes that might be helpful if you will tell me what area.

I came, as I told Mr. Fonvielle, with the notion that I would like to cooperate, get what you needed to know on the table and get out of the picture. I don't think there is any relevancy to anything I have to say, but if you all feel differently, fine.

MR. YOUNG: The subpoena speaks for itself.

MR. GOOLD: Let me just state for the record the basis, Charles, in response to your question, there are multiple bases for the situation we are in now.

The first and most important is the agreement of Mr. Fonvielle with the witness. Second, are the objections we filed, which include attorney-client, to protect attorney client privilege, the excess breadth and width and height of the subpoena including the absence of time

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limitation, the fact that it pertains to everything relating to tobacco, the fact that it is obviously physically impossible for the witness who is recovering from hernia surgery, by the way, to bring the documents to the deposition location.

MR. MIKHAIL: We'll be glad to go over there and look at them.

MR. GOOLD: And the fact that he has worked or sought to work with you all in more than good faith as the record now reflects in our view.

THE WITNESS: Maybe I should ask why what is good for the goose isn't good for the gander. Because as I recall the subpoena I got told me I should be here yesterday at either 9:00 or 10:00 o'clock. And we were able to verbally renegotiate Monday at 10:00 till Tuesday somewhere between 1:00 and 2:30.

We didn't have any problem with that kind of arrangement, so why do we have this problem dealing with what else was said informally over the phone? Why can't we not go ahead while we've got the reporter and you all present and let's delve into the questioning and see where you want to go to see if there is any relevancy to anything

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I might have to say?

MR. KELLER Excuse me one second. Would you mark Mr. Goold's response to the inquiry for the people who have left the room and for the Court.

MR. GOOLD: Just so she can read it back if necessary.

MR. MIKHAIL: You said mark it.

MR. KELLER: Mark it.

MR. GOOLD: I think --

MR. KELLER: Can we go off the record?

THE WITNESS: You seem like a more reasonable guy than the young man --

MR. MIKHAIL: Don't flatter me.

MR. GOOLD: Let's go off the record.

MR. MIKHAIL: Let's stay on the record. I don't want to go off the record just yet. Jim, here is the way I see this.

You and I have had our share of exchanges, but we have gotten along and we can reason. The subpoena requests a certain category of documents.

As I see it herein Mr. Wright said there are certain documents in his possession that potentially, his word, are responsive. I'm having difficulty understanding -- this is the first

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deposition that I've ever been in, in the 18 years I've practiced, where a witness says under oath that he has documents responsive to a subpoena, but he chose not to bring them. I'm having difficulty understanding why.

THE WITNESS: I don't think I --

MR. MIKHAIL: And all the explanations you all have given sound great as an academic argument, but from a practical standpoint the man was subpoenaed -- I'm sorry -- the gentlemen was subpoenaed. He says documents are responsive, but he didn't bring them.

THE WITNESS: I didn't say they were responsive. I said they were there.

MR. GOOLD: And he --

MR. MIKHAIL: We can argue again about that.

MR. GOOLD: Charles, he's described the effort he made to determine what was wanted from the State of Florida's Counsel, so I think we've each put our positions on the record.

I don't propose to burden the record any further.

MR. MIKHAIL: We are not going to get anywhere.

MR. GOOLD: May I say something?

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MR. MIKHAIL: What I propose, and I will leave this for the record since you made your statement, is absent getting Rutter, Judge Rutter's input or directive in this I have proposed to my co-counsel -- and they are still considering it, I don't know what they are going to decide to do -- that we simply go forward with the deposition on all questions that don't relate to the documents and at least make some headway, and then suspend the deposition or adjourn it or recess it, whatever the word is --

MR. YOUNG: The judge will hear us in about two minutes or three minutes.

MR. MIKHAIL: -- until we get the documents and then we can maybe finish the deposition on another day after we get the documents and we can look at them. That's what I was going to propose.

MR. YOUNG: Mr. Wright, if you will excuse us we've got to use this room for a conference call with the judge real quick.

MR. GOOLD: You should be in the room.

MR. YOUNG: Yeah, that's right, third party.

MR. GOOLD: That's fine.

MR. MIKHAIL: Let's go off the record now.

(Whereupon, a telephone conference with Judge

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Rutter was held which has been made a separate transcript; after which the following proceedings were had:)

MR. FONVIELLE: Pack it up.

THE WITNESS: When are we coming back?

MR. GOOLD: Well, let's go talk for a minute.

MR. MIKHAIL: Are we all going over there?

MR. GOOLD: We are not going over there now.

MR. FONVIELLE: Well, yeah, we are. That's what he just said.

THE WITNESS: I don't think that's what he said.

MR. FONVIELLE: Jim, Jim, if you would go out that door, and there is a conference room you can use to the right. There is a conference room you can use to the left. Either way. You don't have to huddle out in the hall.

(Brief recess.)

MR. GOOLD: Back on the record. This is Jim Goold.

As I mentioned off the record we understand there is a room available at the Governor's Inn that would accommodate the deposition. David Keller, my co-counsel, and I are about to go

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downtown to Mr. Wright's office to get a handle on where these boxes are located and begin the process of reviewing them as expeditiously as we can.

I cannot tell you how long. I cannot tell you how big those boxes are, or how long it will take to review each one. All I can tell you at this point is that we will proceed as expeditiously as we can.

MR. KELLER: By the way, for your information the Governor's Inn is two doors away from Mr. Wright's office. That's why I selected that.

MR. FONVIELLE: Let me ask you this. What's your position on simply adjourning the deposition, letting you guys go through these boxes so that we don't have to sit around because you didn't do this when you should have --

MR. GOOLD: We will never stipulate to anything on that basis --

MR. MIKHAIL: I meant it earlier. You don't want to be interrupted, but then you interrupt us every time we open our mouths. Let him say what he wants to say.

MR. FONVIELLE: The point being that you guys go down, go through your documents, take your

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time, do the privilege log. We will reconvene the deposition.

What's it going to take? Whatever it takes, tomorrow, the next day, next week. We have time here. Give us your privilege log. We will go ahead and address the privilege log with Rutter, then take a complete deposition and resolve everything.

Why do it piecemeal now that we've got the issue resolved on the documents?

MR. GOOLD: Setting aside the characterizations.

MR. FONVIELLE: Set it aside.

MR. GOOLD: That's not where we ended up with Judge Rutter. What I'm willing to do and happy to do is if you want to go bowling or have a drink or whatever, while we take a look --

THE WITNESS: Best idea I've heard yet.

MR. GOOLD: -- at the boxes and call you-- and you tell us where to call you -- with a sense of when, how rapidly we can complete that process, we will do so. That's where we are.

So we will -- tell me where we can reach you unless you want to go set up now at the Governor's Inn, just tell us where we can reach you.

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MR. MIKHAIL: It doesn't make much sense for you all to go for two hours -- and please don't walk out on me while I'm talking.

MR. GOOLD: I'm not walking out.

MR. MIKHAIL: And us to wait around and your co-counsel to wait around the videographer and the court reporter to wait around for an indefinite period of time for you to look through them, mark what you think you will have to pull out and claim as privilege for some reason or another, and then we would have to have a time period to review what was left in those documents to be able to ask Mr. Wright any questions them.

We are talking about possibly, possibly till 10:00 o'clock tonight to try to resolve and whatever we are going to resolve to resume the deposition at 10:00 o'clock.

MR. GOOLD: No. I said we'll get back to you as soon as we can.

MR. MIKHAIL: What does that mean?

MR. GOOLD: As soon as we can.

MR. MIKHAIL: Well, I know, but does that mean --

MR. GOOLD: If you'd let us go we'd get on it right now. Tell me where to contact you.

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MR. MIKHAIL: What I'm proposing is we need to resolve this in a way that is certain for everybody here. You all can look at them this afternoon and evening. Decide what they are, for instance. Mark what you think is privileged and then lets all while we are all here now agree when we can reconvene so nobody will wait around on anybody. That's very sensible.

MR. GOOLD: Well, but we need to get a sense of what is involved. Hang on just a minute.

(Brief pause.)

MR. GOOLD: I told you what I think is the best way to go. I will tell you if you want we can get back to you -- this is now 20 of 4:00 -- by 5:00 o'clock.

MR. MIKHAIL: With word on what?

MR. GOOLD: Word on what we found in terms of the boxes, what progress we have made, or what we foresee as far as --

MR. YOUNG: We will be right here. This is where we will do the deposition.

MR. GOOLD: That's not what the judge said, I don't believe. But in any event --

MR. YOUNG: We won't pack up everybody and bring them over there if you are not going to be

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finished by 5:00 o'clock. That makes absolutely no sense.

MR. LOCKMAN: Why don't you look at the documents --

MR. GOOLD: I will do exactly what I understood Judge Rutter told us to do, and that is go look at the documents as rapidly as possible. Get back to you with a sense --

MR. MIKHAIL: Get going.

MR. GOOLD: Let me finish. Get back to you as promptly as I can with word on what that appears to involve. And we have arrangements available downtown convenient to the office to resume.

But in any event we'll report to you I'm representing by 5:00 o'clock. We will call you here if that's what you want. Thanks.

MR. MIKHAIL: Are you done?

MR. GOOLD: Yes.

(Whereupon, the taking of the deposition was recessed at 3:42 p.m. Reading and signing were not waived.)

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C E R T I F I C A T E

STATE OF FLORIDA

COUNTY OF LEON

I, PEGGY L. OWENS, Registered Professional Reporter, at Tallahassee, Florida, do hereby certify as follows:

That I correctly reported in shorthand the foregoing proceedings at the time and place stated in the caption hereof:

That I later reduced my shorthand notes by computer-aided transcription, or under my supervision, and that the foregoing pages 4 through 39 both inclusive, contain a full, true, and correct transcript of the proceedings on said occasion:

That I am neither of kin, nor of counsel, to any parties involved, nor in any manner interested in the result thereof:

THIS 24th day of July, 1997.

PEGGY L. OWENS, RMR
Registered Professional Reporter

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August 23, 1999
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